

REMARKS

I. Introduction

The claims now pending are claims 1 and 2. All previous rejections have been withdrawn except for two. The two remaining rejections in this non-final office action are 35 U.S.C. § 112 objection to use of the phrase "small but nutritional supplementing effective amount" and secondly an obviousness rejection over two Chinese references: Chinese 1997, pages 82-84 and Chinese 2001, pages 54-57.

These rejections have been dealt with many times before. The "small but nutritional supplementing effective amount" rejection for indefiniteness under 35 U.S.C. § 112 was dealt with in the prior response, pages 3 and 4 in great detail. The Law has approved this phraseology under the circumstances of this case. This has been repeatedly told to the Examiner and no response has been provided except to repeat the rejection. It is erroneous under fact and it is erroneous under law and must be removed. Applicants rely upon the prior precedent of *In re Halleck*, 164 U.S.P.Q. 647 (CCPA 1970); *In re Fredrickson and Nelson*, 102 U.S.P.Q. 35 (CCPA 1954); *In re Watson*, 185 U.S.P.Q. 111 (CCPA 1975); and because of that authority will not change the language. The Examiner has not yet responded to this case precedent and its appropriateness for the time honored phrase. It is requested again that this rejection be removed.

In the previous office action the Chinese 1997 reference and the Chinese 2001 reference were cited as § 102 references. Now the Examiner has cited them as 103 references, but again this is to no avail.

The examiner proposes that the difference between the compounds described in Li et al and Zhang et al and those described in our application is the amount of water of hydration. The examiner proceeds to present legal arguments against the proposal. It should be noted that in our

response submitted August 2, 2006 we presented compelling evidence that the compounds described in Li et al and Zhang et al are different than those claimed in our application. This evidence include the differences in the methods of preparation of the compounds, the water solubility of the compounds, the infrared spectral properties of the compounds and the authors description of the chemical structure of the compounds they prepared. In presenting the differences between the compounds we did not address the hydration state of the compounds and do not believe that the hydration state is significant. Therefore, the examiner's argument is not relevant as a reason for rejecting the claims.

In our response to the Office Action of March 28, 2006 filed with the U.S. Patent and Trademark Office on August 2, 2006 we presented evidence that the Chinese References "describe compounds that are different than those described in the Applicants' patent application. We reprint our arguments here to reiterate our position.

"The compounds described in these articles are water soluble as evident from the description of their method of preparation and as stated on page 2 of the 1997 article. The compounds described in the Applicants' application are sparingly soluble in water indicating different structure. To obtain these compounds the Chinese authors filtered the reaction mixture to remove the insoluble unreacted materials, concentrated the filtrate, added methanol and cooled the mixture to obtain the solid product. Here, the inventors simply mix the appropriate reactant under the specified conditions to obtain the products which are sparingly soluble in water and form a voluminous precipitate, another indication of different compounds.

The compounds described in these articles are "inner salts" of the amino acids as concluded by the authors from the examination of the infrared spectra of the compounds. The authors state on page 4 of the 1997 article "These facts indicate that the amino acid in the

compound is still present in the form of an inner salt. The oxygen atom in the carboxyl group forms bond with Zn^{2+} . The N atom does not participate in bonding. The displacement of the extended vibration of NH_3^+ is caused by a hydrogen bond of H_2O .” The compounds described in the present claims 1 and 2 are complexes between the amino acid and the metal ion. As stated in paragraph [0020] of the application “Compounds described in this invention are neutral complexes of one of the essential trace elements such as copper, manganese and zinc with dicarboxylic α -amino acids such as glutamic acid and aspartic acid. The amino acid ligand is selected to serve a dual role, as the bidentate ligand that forms a complex with the metal ion, and as the counter ion to balance the charge on the cationic complex of the metal and amino-carboxyl moiety.” The structural assignment is based on the careful examination of the infrared spectra and other physical and chemical properties of the compounds described in our application. This quote if taken literally says the structures are different and not anticipating.

It is not surprising that the compounds described in the Chinese articles are different than the compounds described in our application since the authors of the Chinese articles used reactants and reaction conditions different than those used in the present application.

The Chinese articles do not describe the preparation of the compounds in sufficient experimental details to allow the reproduction of their experiments. They are therefore not enabling. This makes it impossible to physically compare the compounds obtained by reproducing their methods to the compounds described in our application. But the written description evidence shows they are different.

In summary, the Chinese articles offered nothing more than redundancy to the art already of record. They do not anticipate or make obvious either the compounds, or their use as here claimed.”

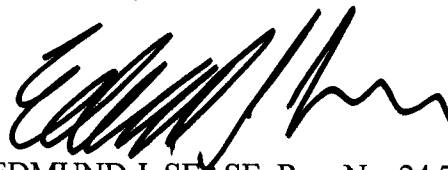
SUMMARY

Again, this has been up to Appeal and the Examiner reversed. This case has been through the filing of one Appeal and the restarting of prosecution twice. It is time to end this. It is requested that the Examiner either allow the case or give a Final Rejection so that an Appeal can be immediately instituted.

No fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

Reconsideration and allowance is respectfully requested.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Edmund J. Sease', with a stylized flourish at the end.

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